

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Computer III Further Remand)

Proceedings: Bell Operating)

Company Provision of)

Enhanced Services)

CC Docket No. 95-20

NYNEX COMMENTS

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Telegraph Company

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Dated: April 7, 1995

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(i)

SUMMARY

The Commission should not retreat from the procompetitive policies adopted in Computer III. Over the last nine years, competition in the provision of enhanced services has flourished, and the participation of the BOCs in the provision of these services on an unseparated basis has led to the introduction of new services and expanded customer choice. Importantly, these public benefits have been realized without the type of anticompetitive conduct or discriminatory practices that those who opposed the elimination of structural separation warned would occur.

In these Comments, NYNEX addresses the limited issue presented to the Commission on remand. We demonstrate that the Commission's current nonstructural safeguards, including the current level of network unbundling, are an effective deterrent against access discrimination (as well as cross-subsidization) by the BOCs. This is evidenced by the fact that there have been no formal complaints filed at the Commission by enhanced service providers (ESPs) alleging that any BOC has engaged in access discrimination.

NYNEX also shows that the Commission's expanded interconnection and other unbundling initiatives have achieved many of the goals understood as

(ii)

“fundamental unbundling.” In fact, NYNEX has been at the forefront of the industry’s movement toward local exchange competition and network unbundling. The efforts of the Commission, together with the voluntary efforts of carriers such as NYNEX, have led to the evolution of a robust and competitive ESP market. The competitiveness of the ESP market alone would make it very difficult, if not impossible, for BOCs to successfully engage in access discrimination.

Finally, NYNEX addresses the Commission’s request for a “fresh look” at the structural separation issue. A fresh look confirms the Commission’s previous conclusion that structural separation requirements impose substantial costs on the BOCs and their customers. In contrast, as evidenced by industry data, integrated basic and enhanced service operations provide substantial public benefits that far outweigh the very minimal risk of anticompetitive behavior by the BOCs. In addition, the emergence of local exchange competition, fueled by the rapid convergence of technology and industries, has all but eliminated the potential risk for BOC discrimination and cross-subsidization. The Commission should therefore reaffirm its prior conclusion that total removal of structural separation requirements is in the public interest.

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NYNEX COMMENTS

The NYNEX Telephone Companies (“NYNEX”)¹ hereby comment on the Commission’s Notice of Proposed Rule Making (“NPRM”) in the above-captioned matter.

I. INTRODUCTION

The Commission has instituted this proceeding in response to the Ninth Circuit’s decision in California v. FCC (“California III”).² There, the Court held that the Commission’s BOC Safeguards Order³ failed to adequately explain how an Open Network Architecture (“ONA”) regime without “fundamental unbundling” would provide adequate safeguards

¹ The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

² 39 F.3d 919 (9th Cir. 1994).

³ 6 FCC Rcd. 7571 (1991).

against access discrimination by the BOCs. The Commission thus seeks comment on whether the nonstructural access discrimination safeguards described in the NPRM -- including the current level of network unbundling -- provide sufficient protection against access discrimination, given the benefits of integrated BOC provision of enhanced services, to warrant lifting the service-specific CEI plan filing requirements.⁴

The Commission also seeks comment on the broader issue of whether some form of structural separation should be reimposed for the provision of enhanced services by the BOCs. Although the Commission has previously determined that structural separation hurts consumers by creating inefficiencies and slowing or preventing the development of enhanced services,⁵ the Commission has decided to take a “fresh look” at whether the benefits of allowing the BOCs to offer enhanced services on an integrated basis outweigh the costs in terms of any potentially greater risk of anticompetitive actions by the BOCs.⁶

In these Comments, NYNEX will demonstrate that the Commission should not retreat from the procompetitive policies adopted in Computer

⁴ NPRM at ¶ 12.

⁵ This finding was upheld by the Ninth Circuit in California III. See 39 F.3d at 925.

⁶ NPRM at ¶ 36.

III.⁷ Over the last nine years, competition in the provision of enhanced services has flourished, and the participation of the BOCs in the provision of these services on an unseparated basis has led to the introduction of new services and expanded customer choice. Importantly, these public benefits have been realized without the type of anticompetitive conduct or discriminatory practices that those who opposed the elimination of structural separation warned would occur.

More specifically, in Point II, NYNEX addresses the limited issue presented to the Commission on remand. We demonstrate that the Commission's current nonstructural safeguards, including the current level of network unbundling, are an effective deterrent against access discrimination (as well as cross-subsidization) by the BOCs. This is evidenced by the fact that there have been no formal complaints filed at the Commission by enhanced service providers (ESPs) alleging that any BOC has engaged in access discrimination.

In Point III, NYNEX shows that the Commission's expanded interconnection and other network unbundling initiatives have achieved many of the goals understood as "fundamental unbundling." As discussed therein, NYNEX has been at the forefront of the industry's movement

⁷ 104 FCC 2d 958 (1986).

toward local exchange competition and network unbundling. The efforts of the Commission, together with the voluntary efforts of carriers such as NYNEX, have led to the evolution of a robust and competitive ESP market. The competitiveness of the ESP market alone would make it very difficult, if not impossible, for BOCs to successfully engage in access discrimination.

In Point IV, NYNEX addresses the Commission's request for a "fresh look" at the structural separation issue. A fresh look confirms the Commission's previous conclusion that structural separation requirements impose substantial costs on the BOCs and their customers. In contrast, as evidenced by industry data, integrated basic and enhanced service operations provide substantial public benefits that far outweigh the minimal risk of anticompetitive behavior by the BOCs. In addition, the emergence of local exchange competition, fueled by the rapid convergence of technology and industries, has all but eliminated the potential risk for BOC discrimination and cross-subsidization. The Commission should therefore reaffirm its prior conclusion that total removal of structural separation requirements is in the public interest.

II. THE COMMISSION'S NONSTRUCTURAL SAFEGUARDS PROVIDE ADEQUATE PROTECTION AGAINST ACCESS DISCRIMINATION AND CROSS-SUBSIDY

In California III, the Ninth Circuit found that the Commission had demonstrated that the BOCs' incentive and ability to cross-subsidize enhanced services would be significantly reduced under the Commission's regime of nonstructural safeguards. The Court also upheld the Commission's preemption of state regulations regarding customer proprietary network information ("CPNI"), network disclosure and structural separation for the intrastate portion of enhanced services that are offered on both an interstate and intrastate basis.⁸ However, the Court held that the Commission had failed to adequately explain how an ONA regime without "fundamental unbundling" would provide adequate safeguards against access discrimination by the BOCs. The Court therefore vacated the Commission's decision in the BOC Safeguards Order to move from a service-specific comparably efficient interconnection ("CEI") plan regime to full structural relief under ONA.⁹

⁸ 39 F.3d at 926, 931-33.

⁹ With full structural relief, the BOCs are permitted to offer all enhanced services on a structurally integrated basis, so long as they comply with ONA requirements. While the BOCs do not have to receive approval of service-specific CEI plans prior to offering any new enhanced service, they must still comply with all other requirements of CEI in addition to complying with other ONA requirements.

The Commission should have no difficulty in providing the Court with an adequate explanation of why its current ONA regime provides more than sufficient justification for the elimination of structural separation. As discussed infra and in greater detail in the NPRM,¹⁰ the Commission's current ONA regime incorporates and subsumes CEI equal access requirements, mandates further unbundling of network service elements after the lifting of the structural separation requirements, and provides other nonstructural safeguards that protect ESPs against access discrimination. As it has evolved, ONA provides a great deal more protection against access discrimination than that provided under the service-specific CEI regulatory regime.

The Commission's ONA regime also provides public interest benefits not attainable under CEI by requiring the BOCs to offer new network services that may be used by non-affiliated ESPs irrespective of whether they would be used by the BOCs in the provision of their own enhanced services. Nor may the BOCs limit the deployment of basic services to those areas where the BOCs offer their own enhanced services. By going beyond the requirements of CEI, the Commission's ONA regime has all but eliminated the potential for access discrimination by the BOCs.

¹⁰ NPRM at ¶¶ 18-29.

The nonstructural safeguards that the Commission has implemented within the current ONA framework enable the Commission, ESPs and other customers to further detect and deter discriminatory conduct by the BOCs. These safeguards are described below.

1. Comparably Efficient Interconnection - In Computer III, the Commission concluded that structural separation was no longer in the public interest and that nonstructural safeguards would protect ESPs from anticompetitive activity by the BOCs while avoiding the inefficiencies associated with structural separation. The Commission therefore permitted the BOCs to provide enhanced services on an integrated basis pursuant to CEI requirements.

Under CEI, the BOCs are required to offer ESPs interconnection to their networks at the same tariffed rates that the BOCs themselves pay, and to provide ESPs with “equal access” to all network service elements that the BOCs themselves need to offer their own enhanced services. Under ONA, these requirements still apply and have been effectively strengthened. The BOCs must still offer network services to competing ESPs on a CEI equal access basis. The only difference is that the BOCs are no longer required to file CEI plans for each new enhanced service they wish to offer.

2. Network Unbundling Under ONA - As a result of the Commission's ONA requirements, NYNEX now offers 87 ONA network services to competing ESPs through nondiscriminatory intrastate and interstate tariffs. Only 20 of these services are utilized by NYNEX for its own enhanced services. NYNEX has thus provided ESPs with the network services that they need to create and introduce their own enhanced services. Many of these services would have not been available under service-specific CEI since they are not utilized by NYNEX for its own enhanced services.

The Commission's ONA regime also allows ESPs to request new network services. To date, NYNEX has satisfied 72 of the 118 nationally recognized requests for service from ESPs. In addition, no ESP has complained that NYNEX has unreasonably refused to respond to a request for a new service which meets the ONA service criteria established by the Commission.¹¹

Since the Commission's approval of NYNEX's ONA Plan in 1991, NYNEX has continued to offer new unbundled services as technology develops and as ESPs identify new basic services needed to provide enhanced services. A number of these services are available through

¹¹ See NPRM at ¶ 21.

emerging technologies, e.g., Common Channel Signalling (“CCS”), that were not developed when NYNEX’s ONA Plan was originally approved. For example, NYNEX uses the CCS technology to offer network services such as Caller ID, Automatic Recall, Automatic Callback and Call Trace. These services have helped to meet the needs of ESPs for billing, caller identification and screening.

3. ONA Amendment Requirements - A BOC must amend its ONA plan at least 90 days before it proposes to offer an enhanced service that uses a new basic service element (BSE). The BOC must obtain approval of the amendment before it can use the new BSE for its own enhanced services. Furthermore, if a BOC desires to develop a new switched access basic serving arrangement (BSA), it must first obtain a Part 69 waiver and approval of an ONA Plan amendment before using the service. This process provides another means for the Commission, ESPs and other customers to identify potential discrimination by a BOC.

4. Reporting Requirements - The BOCs are required to file annual and semi-annual ONA reports. These reports enable ESPs and the Commission to monitor implementation of ONA by all BOCs and thus serve as a further safeguard against discrimination.

5. Network Disclosure Rules - These rules require a BOC to disclose relevant network information to an ESP before introduction of a new or modified network service. This ensures that non-affiliated ESPs receive timely access to technical and marketing information related to new or modified basic services affecting the interconnection of enhanced services to the BOC networks.

6. Nondiscrimination Reporting Requirements - The BOCs are required to file quarterly reports comparing the timeliness of their installation and maintenance of basic services for their own enhanced services operations with that for all customers. These reports compare the quality of basic services provided to the BOCs' own enhanced services with those provided to the BOCs' ESP competitors. The Commission, ESPs and other customers can monitor these reports to ensure that access discrimination is not occurring.¹²

7. Cost Accounting Rules - The Commission's nonstructural safeguards also include a set of cost accounting rules which, together with price cap regulation, ensure against cross-subsidy of enhanced services.¹³

¹² Annual affidavits are also filed by BOC officers attesting to the nondiscriminatory treatment of nonaffiliated ESPs.

¹³ In California III, the Court upheld the Commission's determination that its cost accounting rules and price cap regulation adequately prevent cross-subsidy of enhanced services. 33 F.3d at 926. See also U.S. v. Western Electric Co., 993 F.3d 1572, 1580-81 (D.C. Cir.), cert. denied, 114 S. Ct. 487 (1993); Telephone Company-

The heart of the Commission's cost allocation safeguards is Part 64 of its rules which fully protects the telephone ratepayer against cross-subsidy of enhanced services by excluding from regulated revenue requirements the fully distributed costs of nonregulated activities including enhanced services.¹⁴ The Commission employs ARMIS to ensure that LECs make the proper reductions to their price cap indices to account for any increases in nonregulated cost allocations.¹⁵

Moreover, the Commission's cost allocation rules are purposely skewed in the direction of benefiting the telephone ratepayers. Every time a LEC introduces a new enhanced service, that service has allocated to it a portion of common and overhead costs that have previously been allocated to regulated operations. This shift in cost allocations results in lower rates for basic services for telephone ratepayers.¹⁶ If structural separation were reimposed, basic services would have to bear the full amount of these common and overhead costs.

Cable Television Cross-Ownership Rules, CC Docket No. 87-266, Second Report and Order, 7 FCC Rcd. 5781 (1992) ("VDT Order") at n. 236, Reconsideration Order released November 7, 1994 ("VDT Recon. Order") at ¶¶ 179-82; BOCs' Joint Petition For Waiver Of Computer II Rules, DA 95-36, Order released January 11, 1995 ("Interim Waiver") at ¶ 30; BOC Safeguards Order at ¶¶ 13-14, 46.

¹⁴ See 47 C.F.R. Sec. 64.901; 47 C.F.R. Sec. 32.23.

¹⁵ See 47 C.F.R. Sec. 61.45(d)(v).

¹⁶ See Separation Of Costs, 2 FCC Rcd. 1298 (1987), ¶ 109.

Other aspects of the cost allocation rules are also designed to provide economic benefits to ratepayers of regulated services. For example, the nonregulated assignment of central office and outside plant (*i.e.*, joint network plant) costs to the enhanced service operations of the LECs is made at the level of peak use of such shared plant over a three-year forecast period, even when peak use exceeds average use.¹⁷ To assure that LECs have an added incentive to forecast accurately, the Commission rules impose financial penalties and retrospective cost reallocations upon the LECs in case actual nonregulated shared network plant usage exceeds projected levels.¹⁸ In addition, the Commission's rules prevent the LECs from transferring nonregulated investment costs to regulated activities, absent a waiver. To obtain a waiver, the LEC must demonstrate that the regulated operations require that investment and it cannot be obtained from another source at less cost.¹⁹

8. Affiliate Transaction Rules - The Commission's affiliate transaction rules also prevent cost shifting from enhanced service activities

¹⁷ See 47 C.F.R. Sec. 64.901(b)(4).

¹⁸ See Separation Of Costs, Reconsideration Order released October 16, 1987, 2 FCC Rcd. 6283, ¶ 64; Separation Of Costs, 2 FCC Rcd. 1298, ¶¶ 170-71.

¹⁹ See Separation Of Costs, 2 FCC Rcd. 1298, ¶ 169 & n. 284, ¶¶ 170-72; Separation Of Costs, 2 FCC Rcd. 6283, ¶ 70.

to telephone ratepayers in the case where a LEC nonregulated affiliate provides enhanced services.²⁰ Regardless of whether the LEC or a nonregulated affiliate provides the enhanced services, the affiliate transaction rules ensure that telephone ratepayers are protected from potential cost shifting from transfers of services or assets between the telephone carrier and nonregulated affiliates.²¹ The rules benefit the telephone ratepayers by requiring that transfers of assets be recorded on regulated books at either net book cost or fair market value, whichever is more favorable to the ratepayer.²²

The efficacy and benefits of the Commission's nonstructural safeguards in precluding access discrimination and cross-subsidization have not only been confirmed previously by the Commission and the Courts, they are buttressed by the industry's successful experience operating under these rules. As the Commission notes in the NPRM, no formal complaints have been filed at the Commission by ESPs alleging BOC access

²⁰ See e.g., 47 C.F.R. Sections 32.27 and 64.901; Separation Of Costs, 2 FCC Rcd. 6283, ¶¶1, 109. In addition to complying with these rules, NYNEX has adopted an Affiliate Transactions Policy which has severely limited transactions between the NYNEX telecommunications affiliates and non-telecommunications affiliates.

²¹ See Separation Of Costs, 2 FCC Rcd. 1298, ¶¶ 91-92.

²² See e.g., 47 C.F.R. Sections 32.27(a)-(c). This rule was upheld on judicial review. Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

discrimination.²³ In addition, no ESP has petitioned the Commission to order the BOCs to provide network service that would be useful to the ESP for providing an enhanced service. This record of performance clearly demonstrates that nonstructural safeguards are effective and that the BOCs are fulfilling their obligation to treat all ESPs equally.

III. NETWORK UNBUNDLING AND MARKET FORCES PROVIDE FURTHER PROTECTION AGAINST ACCESS DISCRIMINATION

The Commission also seeks comment on whether the threat of BOC access discrimination has diminished as the result of competitive pressures and Commission initiatives that require the BOCs to provide further network unbundling. As shown next, both of these factors prevent the BOCs from engaging in access discrimination to the detriment of competition in the enhanced services market.

A. NYNEX's Network Has Been Unbundled

In remanding this proceeding to the Commission, the Ninth Circuit observed that the Commission had retreated from Computer III's requirement of "fundamental unbundling" of the BOC networks as a precondition to lifting structural separation. To the extent, if at all, that the

²³ Likewise, there have been no formal complaints alleging access discrimination filed against NYNEX with state regulatory authorities.

Commission has retreated from “fundamental unbundling,” it has done so in recognition of the fact that inefficiencies might result from unnecessarily unbundled or splintered services and that unbundling could only occur to the degree it was technologically feasible.²⁴

The ESP industry’s initial comments on the BOC ONA Plans envisioned that the network could be unbundled into four fundamental “building blocks.” These building blocks could be broadly categorized as: (1) the distribution network; (2) the end office; (3) interoffice trunks; and (4) tandem offices.²⁵ In the BOC ONA Order,²⁶ the Commission approved the use of the “common ONA model” that described the technical manner in which ESPs obtain access to various unbundled network services that BOCs would provide. At that time, the Commission concluded that it would not require the kind of fundamental unbundling that would allow ESPs to connect their own trunks or loops to BOC switching facilities.²⁷ However, since 1988, the Commission has effectively achieved “fundamental

²⁴ NPRM at ¶ 15. However, as we have shown in Section II, the regulatory regime that the Commission has put in place permits the public to achieve the benefits of BOC structural integration without attendant regulatory risks.

²⁵ See Hatfield Associates, Open Network Architecture: A Promise Not Realized (1988) (the “Hatfield Study”).

²⁶ 4 FCC Rcd. 1 (1988).

²⁷ BOC ONA Order, 4 FCC Rcd. at 13, ¶ 18.

unbundling” through other proceedings. The BOCs are now required to provide expanded interconnection enabling third parties to compete more effectively in the provision of interstate special access, transport, and tandem switched capabilities and services. In addition, the BOCs have unbundled the switching and transport elements of their network, thus allowing ESPs to use competitive access providers instead of the BOCs to provide the transport functions which may be necessary or useful in the provision of enhanced services.²⁸

For example, today an ESP can bypass the use of the NYNEX interoffice network by either collocating its own transmission equipment or by using the services of a collocated competitive access provider (CAP) in order to interconnect with NYNEX’s switched network or private line (special access) loops. This provides ESPs with unbundled access to “interoffice trunks.” In addition, in New York, an ESP can use a competitive local exchange carrier (CLEC) to gain access to local loops. In the alternative, the CLEC could provide the local loop and interconnect with the NYNEX switch. This provides ESPs with access to the “distribution network” and the “end office.” NYNEX has also unbundled access to its tandem switches and provides tandem signalling at its end offices to

²⁸ See NPRM at ¶ 30.

alternative tandem switching providers. NYNEX thus currently offers the kind of “fundamental unbundling” of network services that the industry envisioned as the goal of ONA seven years ago.

NYNEX has long been in the forefront of the industry’s movement toward local exchange competition and network unbundling. In New York, NYNEX has unbundled its local exchange services into “link” and “port” components.²⁹ This allows alternative dialtone competitors to connect their loop services to the ports on NYNEX’s switches or to connect NYNEX links to the competitors’ switch. ESPs can thus offer their services to consumers using the facilities of competitive local exchange carriers rather than using NYNEX’s facilities.³⁰

Further evidence that NYNEX is opening its network to competition are the landmark agreements that were entered into earlier this year between NYNEX and MFS and Cablevision, as well as last year’s agreement with Teleport. These agreements allow competitive local exchange carriers to

²⁹ A “link” is the portion of an exchange service representing the loop between the customer premises and the central office. The “port” represents the connection to the switch and the dialtone services that are included in residential or business exchange rates.

³⁰ In addition, proceedings are underway in most of the other states in the NYNEX region. These proceedings will also address network unbundling and local exchange competition issues.

efficiently and cost-effectively interconnect with NYNEX enabling them to offer customers a meaningful choice for local telephone service.

Competitors can completely bypass NYNEX's network due to the emergence of local exchange competition which has been fueled by the rapid convergence of technology and industries. For example, in October 1994, IBM and Cablevision announced that they would provide an application of distance learning to the Yorktown School District, using Cablevision's cable facilities rather than NYNEX's network services.³¹

It is thus clear that the goals understood as "fundamental unbundling" are being achieved. The Commission's evolutionary approach to network unbundling has progressed effectively, and more importantly, in an efficient manner.³² With the emergence of competitive local exchange carriers, it is now difficult, if not impossible, for the BOCs to discriminate against competing ESPs. ESPs can completely bypass NYNEX's network because real alternatives to NYNEX's network services now exist.³³

³¹ See Business Wire (October 14, 1994).

³² The Commission's evolutionary approach to "unbundling" has permitted the Commission and the industry to address many policy issues associated with unbundling in an efficient manner. These issues would not have been fully addressed if a "flash cut" was made.

³³ The Commission has also proposed in the Intelligent Networks proceeding (CC Docket No. 91-346) to provide third parties, including ESPs, with access to AIN functions such as the service management system and the service control point. While NYNEX has expressed reservations on some of the Commission's proposals in its Comments in that proceeding, it is nonetheless clear that the Commission's

B. The ESP Market Is Vibrant

Another check on access discrimination by the BOCs against competing ESPs is the existence of a vibrant and robust enhanced services market. As the Commission notes in the NPRM, large, well-established competitors can be relied on to monitor the quality of access to the network, thereby reducing the ability of the BOCs to discriminate.³⁴ These competitors have the ability to detect whether the BOCs offer an enhanced service using capabilities not available to others. Furthermore, it is not in the BOCs' financial interest to develop a new basic service and limit its availability to the BOCs' own enhanced services. Not only would this expose the BOCs to possible fines and forfeitures, it would also likely make it impossible for the BOCs to offer the new enhanced service at a reasonable price and at the same time recover their costs.

There is no question that since the adoption of ONA, the enhanced services market has flourished. As discussed in the attached study prepared by Dr. Jerry Hausman, the overall market for information services, including on-line databases, value added network services, voice

procompetitive goals would provide further protection against access discrimination to the extent that it allows third parties to perform functions that they must rely on the LECs to perform today.

³⁴ Competitors can also bypass the local exchange network by using microwave or cable systems, or the network facilities of competitive local exchange carriers.

messaging, and electronic mail grew from \$7.5 billion in 1988 to \$13.6 billion in 1993. The market for these services is growing at a rate of 16% per year.³⁵

Value added network (VAN) services have grown from \$0.5 billion in 1989 to \$3.4 billion in 1993. Subscribership to all videotext gateways increased from 715,000 to 6.3 million in 1994. Electronic mail (E-mail) has become nearly ubiquitous since 1988. E-mail subscribership has grown from 6 million in 1989 to over 13 million in 1993. E-mail revenues have increased from \$574 million in 1989 to \$740 million in 1991 and an estimated \$1.2 billion in 1994.

Similarly, BOC entry into the voice messaging market segment has led to lower prices and higher demand. Between 1989 and 1991, users of voice messaging equipment more than doubled, from 5.3 million to 11.6 million. The overall voice messaging market grew from \$665 million in 1989 to \$1.1 billion in 1991 and \$1.54 billion in 1994. Voice messaging revenues are expected to exceed \$3 billion by 2000.³⁶

³⁵ See J. Hausman, Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services (1995) at p. 8 (“Hausman Study”).

³⁶ Id. at p. 9.

Explosive growth is also projected for electronic data interchange (EDI) services from \$1.5 million to \$21 million.³⁷ The Department of Commerce noted in its U.S. Industrial Outlook 1994 that enhanced fax services, transactional-related services such as EDI, and public data services should grow at a rate exceeding 15% per year.³⁸ Clearly, the enhanced services market is alive and well.

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It is apparent from the foregoing that the nonstructural safeguards established in the ONA Orders, the continuing unbundling of network services, the emergence of competitive local exchange carriers and the existence of a dynamic enhanced services market all make it difficult, if not impossible, for the BOCs to discriminate against competing ESPs. In the NYNEX region, not only can ESPs obtain unbundled network services, they can bypass NYNEX's network and use the network services of competitive local exchange carriers. The Commission is thus fully justified in replacing the current service-specific CEI plan regime for BOC enhanced services with full structural relief.

³⁷ Link Resources Corporation, Mass Market Telecommunications, p. 1 (1994).

³⁸ U.S. Industrial Outlook 1994, p. 29-7.